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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

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June 22, 2011

The Honorable Charles F. Bolden, Jr.
Administrator
National Aeronautics and Space Administration
Washington, D.C. 20546-0001

Dear Administrator Bolden:

Over the past few weeks, the National Aeronautics and Space Administration (NASA) has repeatedly refused to provide documents the Senate Commerce Committee needs to conduct appropriate oversight of your agency. We are writing to inform you that if you do not provide these documents to us by 6:00 p.m. on Monday, June 27, 2011, Chairman Rockefeller will issue a subpoena requiring the production of these documents.

In a letter we wrote you on May 18, 2011, we expressed concern that NASA was not making satisfactory progress in implementing the requirements of the NASA Authorization Act of 2010 ("the 2010 Act"), which was signed into law on October 11, 2010. The 2010 Act was based on S. 3729, a bill that the Senate Commerce Committee developed through months of bipartisan deliberations, and reported out unanimously to the Senate on July 15, 2010.

The 2010 Act made necessary policy changes to NASA as it faces new budgetary and mission challenges. One of the law's important goals was to shorten the anticipated gap in U.S. human space flight capabilities caused by the retirement of the Space Shuttle and the cancellation of the Constellation program. The 2010 Act requires NASA to leverage its previous investments in the Shuttle and Constellation programs to develop a launch system and crew vehicle that could be operational as early as 2016. As we explained in our May 18 letter, NASA risks losing the unique and highly technical skills its civil servant and contractor workforces have developed over 50 years of human space flight if it does not act expeditiously to execute this policy.

After the bill became law in October 2010, the Commerce Committee, pursuant to its oversight responsibilities, closely monitored NASA's activities for evidence that your agency was adhering to the 2010 Act and enacting its policy changes in a timely manner. Because NASA repeatedly missed mandatory reporting deadlines and did not appear to be making satisfactory progress implementing the 2010 Act, our May 18 letter requested briefings and documents that would provide us more detailed information about what steps NASA is taking to comply with the law.

As the Senate Committee responsible for developing NASA's policies and authorizing its expenditures, we also have the duty to make sure that NASA is spending taxpayers' dollars in accordance with the law. In the process of conducting this legislative oversight, the Commerce

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Committee has the right to any information that will aid us in understanding how and whether NASA is implementing the 2010 Act.¹

While NASA has provided a partial response to our May 18 letter, you have thwarted our oversight activities by withholding key documents that describe NASA's compliance with the 2010 Act. For example, NASA informed Commerce Committee staff during a telephone call on June 7, 2011, that NASA was withholding at least 19 separate drafts of a report it is required to submit to Congress under Section 309 of the 2010 Act. These drafts may contain important information about the data and analyses NASA has relied on to comply with the 2010 Act's space launch system and crew vehicle requirements. The drafts also may contain information that will help the Committee better understand why NASA has failed to satisfactorily comply with the Section 309 reporting requirement. In spite of repeated requests by Committee staff, NASA has not offered any valid basis for why it is withholding these and other documents that are clearly responsive to our May 18 letter.

We regret that NASA appears to be unwilling to cooperate with our efforts to conduct legitimate congressional oversight. Although NASA assured Commerce Committee staff in a May 27, 2011, telephone call that your agency was "not looking to hide anything," NASA's failure to provide the requested documents over the past month leaves us no choice but to conclude that NASA does not intend to cooperate with our efforts to make sure that your agency is complying with its duties under the 2010 Act and properly spending taxpayers' dollars.

Unless NASA decides to change its approach to our inquiry and provide the Committee with the materials requested in our May 18 letter by 6:00 p.m. on Monday, June 27, 2011, Chairman Rockefeller will issue you a subpoena for production of these documents. If you have any questions about this letter, please contact John Williams of the majority staff (202-224-1300) or Rebecca Seidel of the minority staff (202-224-1251).

Sincerely,



John D. Rockefeller IV
Chairman



Kay Bailey Hutchison
Ranking Member

¹ See e.g., *McGrain v. Daugherty* 273 U.S. 135, 175 (1927) ("A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information – which not infrequently is true – recourse must be had to others who do possess it.")